

48A C.J.S. Judges § 144

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Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VI. Authority, Powers, and Duties

A. Introduction

§ 144. Generally

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West's Key Number Digest

West's Key Number Digest, [Judges](#)  23, 33

Although a judge's authority generally comes from the constitution, the legislature may grant powers to judges, and a judge may exercise inherent powers, including those that are ministerial, as opposed to judicial.

Generally, a judge's authority and powers come from the people¹ and the constitution² and do not derive from the judicial oath of office.³ Except as limited by constitutional provisions,⁴ the legislature also has the power to prescribe the jurisdiction and powers of judges⁵ and to regulate their duties.⁶ Where there is no express prohibition, the legislature may invest judges with judicial powers other than those conferred by the constitution;⁷ however, the legislature may not confer judicial powers on judges in violation of constitutional prohibitions.⁸

Judges possess not only that authority expressly granted to them by statute⁹ or the constitution¹⁰ but also have inherent powers¹¹ and may employ all ordinary means reasonably necessary for the

full exercise of powers granted to and duties imposed upon them.¹² A judge's inherent authority should be summoned, however, only in absence of statutory authority.¹³

Ministerial powers and duties.

The inherent power of a judge is not limited to the exercise of purely judicial functions;¹⁴ rather, a judge may be authorized or required to perform acts of a ministerial character.¹⁵ The public interest often justifies a member of the judiciary in performing nonjudicial tasks which are not burdensome,¹⁶ and the mere fact that an act which would otherwise be regarded as ministerial is performed by a judge or judicial officer does not make the act judicial in nature.¹⁷

Whether a judge acts in a judicial or administrative capacity, his or her actions must be within the scope of his or her authority.¹⁸

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Footnotes

- 1 Mont.—*State ex rel. Wilcox v. District Court of Thirteenth Judicial Dist.*, 208 Mont. 351, 678 P.2d 209 (1984).
- 2 Mont.—*State ex rel. Wilcox v. District Court of Thirteenth Judicial Dist.*, 208 Mont. 351, 678 P.2d 209 (1984).

Wis.—*City of Milwaukee v. Wroten*, 160 Wis. 2d 207, 466 N.W.2d 861 (1991).
- 3 Wis.—*City of Milwaukee v. Wroten*, 160 Wis. 2d 207, 466 N.W.2d 861 (1991).
- 4 Mont.—*State ex rel. Bennett v. Bonner*, 123 Mont. 414, 214 P.2d 747 (1950).

Ohio—*State v. Cotton*, 56 Ohio St. 2d 8, 10 Ohio Op. 3d 4, 381 N.E.2d 190 (1978).
- 5 Ala.—*Lett v. Weaver*, 79 So. 3d 625 (Ala. Civ. App. 2010).

Fla.—*C.B. v. Dobuler*, 997 So. 2d 463 (Fla. 3d DCA 2008).
- 6 Me.—*Packard v. Whitten*, 274 A.2d 169 (Me. 1971).
- 7 Fla.—*State ex rel. Kennedy v. Lee*, 274 So. 2d 881 (Fla. 1973).

Liberal construction
Statutes conferring additional power on justices should be liberally construed.

N.Y.—*Millhauser v. Schwach*, 152 Misc. 546, 273 N.Y.S. 944 (Mun. Ct. 1934).
- 8 Mo.—*State ex rel. Dorsey v. Sprague*, 326 Mo. 654, 33 S.W.2d 102 (1930).

- 9 Mass.—Clerk of Superior Court for Middlesex County v. Treasurer and Receiver General, 386 Mass. 517, 437 N.E.2d 158 (1982).
- 10 Wis.—City of Milwaukee v. Wroten, 160 Wis. 2d 207, 466 N.W.2d 861 (1991).
- 11 N.Y.—Bankers Trust Co. v. Braten, 101 Misc. 2d 227, 420 N.Y.S.2d 584 (Sup 1979).
- Wis.—City of Milwaukee v. Wroten, 160 Wis. 2d 207, 466 N.W.2d 861 (1991).
- 12 Mass.—Clerk of Superior Court for Middlesex County v. Treasurer and Receiver General, 386 Mass. 517, 437 N.E.2d 158 (1982).
- 13 Mass.—Com. v. Widrick, 392 Mass. 884, 467 N.E.2d 1353 (1984).
- 14 N.Y.—Bankers Trust Co. v. Braten, 101 Misc. 2d 227, 420 N.Y.S.2d 584 (Sup 1979).
- 15 Ga.—Castleberry v. Horne, 220 Ga. 691, 141 S.E.2d 394 (1965).
- 16 Haw.—Kekoa v. Supreme Court of Hawaii, 55 Haw. 104, 516 P.2d 1239 (1973).
- 17 Ga.—Davis v. Forrester, 188 Ga. 73, 2 S.E.2d 601 (1939).
- 18 Md.—St. Joseph Medical Center, Inc. v. Turnbull, 432 Md. 259, 68 A.3d 823 (2013).

Limits of authority

Judges have no authority to grant immunity for unlawful acts.

S.D.—Wipf v. Hutterville Hutterian Brethren, Inc., 2013 SD 49, 834 N.W.2d 324 (S.D. 2013).